

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A FLOOD
CONTROL ZONE PERMIT DENIED TO
DONALD RAY FILLO BY THE
STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,
DONALD RAY FILLO,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 80-201

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of the denial of a flood control zone permit, came before the Pollution Control Hearings Board, Nat W. Washington, Chairman, and David Akana, Member, convened at Lacey, Washington, on February 4, 1981. Hearing Examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to 43.21B.230. Appellant appeared and represented himself. Respondent appeared by Jeffrey D. Goltz, Assistant Attorney General. Reporter

1 Kim Otis recorded the proceedings.

2 Witnesses were sworn and testified. Exhibits were examined. From
3 testimony heard and exhibits examined, the Pollution Control Hearings
4 Board makes these

5 FINDINGS OF FACT

6 I

7 Appellant, Donald Ray Fillo, owns real property in Grays Harbor
8 County abutting the Chehalis River. Specifically, his property is the
9 infield created when the river bridged its own horse-shoe curve. Thus
10 the east, north and west sides of the property abut a dry channel and
11 the active channel of the river runs along the south side.

12 II

13 Appellant's real property lies entirely within the boundaries of a
14 State Flood Control Zone, namely, Chehalis Flood Control Zone No. 13.

15 III

16 Chehalis Flood Control Zone No. 13 was established by written
17 order describing the lands included therein, entered on November 19,
18 1935.

19 IV

20 In 1977, the United States Army Corps of Engineers published a map
21 establishing the 100-year cycle floodway and flood fringe lines along
22 the Chehalis River at this and other locations.

23 V

24 Appellant's property is entirely within the lateral boundaries of
25 the 100-year cycle floodway of the Chehalis River.

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VI

In 1980, the Washington Public Power Supply System (WPPSS) rip-rapped the appellant's river bank abutting the active channel of the river. This was apparently done to keep the river from meandering away from water intakes serving the Satsop nuclear development. Soil was removed to install the rip-rap and, with appellant's consent, WPPSS deposited the soil on appellant's land creating an access road and homesite above the prior level of the land. Respondent, Department of Ecology (DOE) has issued no permit or order relating to that access and homesite fill.

VII

In August, 1980, appellant sought from DOE a flood control zone permit to construct a single family home upon the WPPSS fill on his property in question. The home is intended for permanent occupancy. DOE denied the permit, from which appellant appeals.

VIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board makes these

CONCLUSIONS OF LAW

I

In 1935, the legislature enacted chapter 86.16 RCW which provided for the designation of flood control zones such as the one involved here. The Department of Ecology promulgated WAC 508-60-040 which properly allows DOE to examine all applications for flood control zone

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1 permits for construction upon the floodway to insure compliance with
2 the following requirement:

3 (4) The structures or works are not designed for, or
4 will not be used for either a) human habitation of a
5 permanent nature... (emphasis added) WAC
6 508-60-040(4).

7 See Maple Leaf Investors v. DOE, 88 W.2d 726, 565 P. 2d 1162 (1977).

8 The floodway in DOE's regulation is the 100-year cycle floodway. WAC
9 508-60-030.

10 Appellant proposes a structure for human habitation of a permanent
11 nature, and has not proven that it would be located outside the
12 floodway. Appellant's application for a flood control zone permit was
13 properly denied by DOE.

14 II

15 We express no opinion as to the effect of building on an elevation
16 of land above the surface of the 100-year flood waters as such an
17 elevation was not proven to be present by appellant's evidence in this
18 case. Neither do we express an opinion as to the legality of the
19 WPPSS fill which is not the subject of the DOE order before use

20 III

21 Any Finding of Fact which should be deemed a Conclusion of Law is
22 hereby adopted as such.

23 From these Conclusions, the Board enters this

24
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27 FINAL FINDINGS OF FACT,
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ORDER

The denial of appellant's application for flood control zone permit by DOE is hereby affirmed.

DONE at Lacey, Washington, this 23rd day of February, 1981.

POLLUTION CONTROL HEARINGS BOARD

Nat W. Washington
NAT W. WASHINGTON, Chairman

David Akana
DAVID AKANA, Member

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